UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,099	03/31/2004	**Katalin Varadi**	P-279.00	9454

44183 7590 03/12/2009

BAXTER HEALTHCARE CORPORATION
ONE BAXTER PARKWAY
MAIL STOP DF2-2E
DEERFIELD, IL 60015

EXAMINER	
KOSSON, ROSANNE	
ART UNIT	PAPER NUMBER
1652	

MAIL DATE	DELIVERY MODE
03/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

The proposed amendment raises new issues that would require further consideration and search with respect to the proposed amendments to claims 1 and 22 to add the limitations that 1) the mixture that is component (ii) in the kit is prepared from a solution comprising a fluorescently labeled thrombin substrate, calcium chloride and DMSO and 2) an amount of water is added to form a clear solution containing 1 mM thrombin substrate and 15 mM calcium chloride. Applicants propose to add a wherein clause that is a step to a kit claim. The proposed amended claims would have to be searched with respect to the effect on a polypeptide of lyophilizing the polypeptide with and without a hygroscopic salt in the presence and absence of DMSO.

Regarding Applicants' arguments, Table 1 (in contrast to Applicants' previous 132 Declaration) does compare the aqueous solubility of samples containing equal concentrations of the fluorescently labeled thrombin substrate and calcium chloride. But, it is not clear if the same concentration of DMSO is present in each sample or if it is different in each sample. Also, Applicants' photographs are of poor quality and show no details. Applicants note that higher quality photos may be provided to Examiner as a courtesy. Applicants are advised that if certain information (including a set of exhibits) is important for patentability, Applicants should consider it a necessity, not a courtesy, particularly a courtesy that will entail extra rounds of prosecution.

Claims 22-23 are directed to a method which does not require reconstitution of the lyophilized components using water or a particular buffer prior to contacting with the sample. Step (a) of claim 22 merely indicates that if or when the lyophilized substrate is mixed with water, it forms a clear solution. This limitation does not require reconstitution in water. Moreover, step (b)

recites that the sample is contacted with lyophilized components. The claim requires only contacting the lyophilized tissue factor/phospholipid complex and the lyophilized substrate directly with the sample. Presumably, the sample is a liquid (e.g., plasma), otherwise no thrombin could be generated. Therefore, the argument that the lyophilized substrate mixture is better because it dissolves better in water/buffer is not relevant, as the method does not require reconstitution in water/buffer prior to contacting with the sample. Because the sample provides the medium for dissolution, the issue is whether or not Applicants' lyophilized substrate would dissolve better in any liquid medium and not just in water, with or without buffer. For example, if the sample is whole blood, will Applicants' lyophilized substrate mixture dissolve better in whole blood compared to a lyophilized thrombin substrate that is contacted or mixed with blood containing the same amount of calcium chloride. Applicants have not addressed this point.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosanne Kosson whose telephone number is (571)272-2923. The examiner can normally be reached on Monday-Friday, 8:30-6:00, alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed can be reached on 571-272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rosanne Kosson
Examiner, Art Unit 1652

rk/2009-03-02

/Delia M. Ramirez/
Primary Examiner, Art Unit 1652

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/816,099	**Applicant(s)** VARADI ET AL.	
	Examiner Rosanne Kosson	**Art Unit** 1652	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on February 19, 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-8,10-13,22 and 23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.